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Five ways to make the European Peace Facility a role model for arms export control

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Policy recommendations

\ Make clear and public which arms and military equipment are transferred to whom and why

All European Peace Facility (EPF)-funded transfers of arms and other military equipment should be transparent and well justified. The European Union should issue a biannual public report about all EPF-funded arms transfers, including information on the type, number, condition and effective end-user of the arms. In addition, the reports should include a detailed explanation of the reasons for each transfer.

\ Introduce post-shipment controls

To reduce the risk of diversion, the European Union should introduce post-shipment controls for arms and military equipment that were funded via the EPF. End-use certificates for such transfers should include the permission for officials from the European Union, e.g. from the European External Action Service, or EU member states, to conduct such on-the-spot checks.

\ Support weapons and ammunition management in recipient countries

Transfers of EPF-funded arms and other military equipment should be tied to a compulsory evaluation of the existing structures of weapons and ammunition management (WAM). Depending on the results of this

evaluation, the European Union should assist the recipient country with EPF-funded WAM assistance programmes, which build on initiatives that already work closely together with the relevant local actors.

\ Involve the European Parliament

The European Parliament should be involved in discussing the use of the EPF to fund arms transfers to avoid democratic legitimacy problems and improve the accountability of such transfers.

\ Create a mechanism for affected populations to report complaints and grievances

People living in the countries that receive arms from Europe are most affected by decisions made by the EPF. To ensure that the European Union remains accountable for their decisions and cases of misuse, it should establish a mechanism for affected civilians in recipient countries to report complaints and grievances resulting from European arms transfers.

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Introduction

The Council of the European Union (EU) is currently discussing the establishment of a European Peace Facility (EPF), an off-budget fund, potentially worth €5 billion. The EPF's aim is to

- 1\ fund the common costs of military missions and operations under the EU Common Security and Defence Policy (CSDP);
- 2\ fund military peace support operations led by international partners on a global scale;
- 3\ finance transfers of armaments and further military equipment and infrastructure to third countries as a form of capacity-building.

The Treaty on European Union does not allow the Union's budget to be used to finance expenditure with military or defence implications, which is why the EPF is not a part of the EU's Multiannual Financial Framework (MFF), but would run alongside it for the period 2021-2027. What remains unclear is how the EPF will be operationalised. This *Policy Brief* focusses on the third aim of the EPF and makes concrete suggestions for how to go about the financing of arms transfers to third countries.

Supporting security forces in third countries with training and/or military equipment is reasonable if it helps to strengthen a legitimised monopoly of force that improves peoples' sense of security in their country. However, arms transfers in the name of capacity-building are accompanied by significant risks and problems. Where the legitimacy of the security forces is in doubt, their human rights record poor and civilian oversight and democratic control mechanisms are missing, there is a high risk that transferred armaments will be misused by the military and the security forces.

Another risk is the diversion of delivered armaments in the recipient country or region. High levels of corruption increase the likelihood of arms being resold, e.g. by military personnel on the black market. There is also the risk of illegal re-export to armed actors in

other countries or looting/theft from unsecured weapons depots. In recipient countries with violent conflicts, state security forces might be overrun by armed groups who will take their arms and other military equipment. In other words, the risks may be high that transferred arms are involved in severe human rights violations and worsen the security situation abroad.

If the EU wants to reduce these risks when it finances arms transfers to third countries via the EPF—with European taxpayers' money—it will have to put strong safeguards in place. If this is done, the EPF could function as a role model for responsible and accountable arms export control of the EU and its member states. This *Policy Brief* recommends adopting five safeguards for the EPF to ensure that the new fund fosters transparency in its financing of arms transfers, reduces diversion by supporting weapons and ammunition management initiatives and by introducing post-shipment controls. It also promotes democratic and civic control of arms transfers by including the voices of the European Parliament and civilians affected by these transfers.

Box 1

European Peace Facility

The European Peace Facility (EPF) was proposed by former High Representative (HR) Federica Mogherini in June 2018. As a Council Decision under the Common Foreign and Security Policy (CFSP), the proposed EPF will draw together existing off-budget mechanisms (namely Athena and the African Peace Facility) and seek to complement and support the EU's external actions in peace and security. Notably, the EPF will permit the EU to invest in building the capacity of third-country security forces, which includes infrastructure, equipment and military assistance.

A committee composed of member states' representatives will be in charge of budgets and accounts. The High Representative (HR), with support of the European External Action Service and the assistance of the Commission's Service for the Foreign Policy Instruments, will ensure its implementation. The Council or the Political and Security Committee, acting unanimously on proposals from the HR, will decide on programmes and projects.

Make clear and public which arms and military equipment are transferred to whom and why

EU-funded arms transfers in the context of the proposed EPF should be transparent and well justified. Several previous arms exports by EU member states have backlashed and resulted in public scandals. In Mexico, for example, Heckler & Koch- German-made arms were used by the police in the state of Guerrero to oppress a student demonstration in 2011, killing two protesters. Bulgarian-manufactured machine guns and rockets exported to the Iraqi military and security forces between 2005 and 2011 fell into the hands of Islamist fighters. The EU can foster transparency through the proposed EPF by detailing and making public the type of support provided to a third country. This includes the type, number, condition and effective end-user of EPF-funded and transferred arms. Furthermore, the EU should use the establishment of the EPF to introduce a transparent justification mechanism for arms transfer decisions. Knowing the reasons for such a decision is the basis for independent oversight by parliaments and civil society. A fair assessment of an arms transfer based on the EU's own criteria is possible only if information on what exactly is transferred to whom, and why is available.

In 2008, the legally binding successor to the 1998 Code of Conduct on Arms Exports, the EU Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (hereafter Common Position) came into force. The Common Position sets out eight criteria¹ for the assessment of arms export licences by member states and is accompanied by an annual report about EU arms exports. While this report contains information on the financial volume of licences for arms exports, it does not provide information on the exact type of arms and the de facto end-user (military, police, other security forces). Every decision about an EPF funded arms transfer must be

in line with the Common Position. However, the structure of current reports does not allow to independently assess compliance with the Common Position's criteria because they do not provide enough information about European arms exports. This is why the EPF needs its own reporting system that details the type of support provided to a third country. In doing so, the EU would set standards for arms transfer reporting obligations, perhaps also supporting the discussion concerning the current inconsistency of its member states' annual export reports. It could issue a biannual public report about all EPF-funded arms transfers to third countries. In addition to the information on the arms and end-users, these reports should also include a detailed explanation of every transfer and state why it is in line with the eight criteria of the Common Position.

A new reporting system of EPF-funded arms transfers would not change the fact that final decisions on exports are taken at the national level. The added value of a new system is to make public all information necessary for an independent evaluation of EPF-funded arms transfers. This transparency respects the right of European taxpayers to information about how their money is spent. Furthermore, it helps the EU and its member states to improve their use of EPF funds as independent assessments of the arms transfers, e.g. by researchers and civil society organisations, provide important knowledge that can inform decision-making on which arms transfers should or should not be funded by the EPF. Hiding this decision-making process from the European citizens could instead delegitimise the EPF.

Introduce post-shipment controls

Arms diversion is a widespread problem, especially in conflict-ridden countries: The UK-based organisation Conflict Armament Research documented more than 11,000 cases of arms diversion in 23 conflict-affected countries for the period 2011 to 2018, which includes more than 500,000 units of weapons and related matériel. These weapons frequently end up in the hands of non-state armed groups, undermining states' monopoly on the use of force and increasing the danger of violence committed against civilians.

¹ \ These criteria include, among others, respect for human rights and international humanitarian law in the recipient country, internal conflicts, regional peace, security and stability and the danger of illicit re-export and diversion.

For example, in 2011, rebels in Libya fighting the Gaddafi regime used ammunition that the Swiss company RUAG had sold to Qatar in 2009. The Qatari government declared it had evaded the ban on re-exporting Swiss ammunition “in error”. Only one year later, the Free Syrian Army fighting the government of Bashar al-Assad reportedly possessed Swiss-made hand grenades. These grenades could be traced back to a sale to the United Arab Emirates in 2003/2004, which included a clause not to re-export the grenades to countries at war. A joint investigation of Switzerland and the United Arab Emirates showed that the grenades had been transferred to Jordan, from where they were re-exported to Turkey and then to Syria. These cases prompted the Swiss government to introduce post-shipment controls in 2013.

To reduce the risk of diversion, the EU should follow this example and introduce post-shipment controls for arms transfers funded by the EPF. This entails on-site checks in the recipient country that go beyond ex-ante risk assessments carried out mainly by European headquarters. When arms transfers are to be funded from the EPF, end-use certificates should include the permission for officials from the EU, e.g. from the European External Action Service or EU member states, to conduct such on-the-spot checks. Proof of non-compliance with the end-use certificate or refusals of the formerly granted controls should be sanctioned, e.g. by excluding the respective country from further EPF-funded arms transfers for the next three years. As post-shipment controls are still the exception concerning arms exports, the EPF would make a significant contribution to raising awareness of the necessity to control whether transferred arms are still in the intended end-user’s possession and used for the intended purpose. Currently, only one EU member state, Germany, has introduced post-shipment controls.

Support weapons and ammunition management in recipient countries

The EU must consider potential diversion of EPF-funded arms as a result of insufficient structures for weapons and ammunition management (WAM)

in the recipient country. WAM is defined as the oversight and management of arms and ammunition throughout their lifecycle, including the establishment of frameworks, processes and practices for safe and secure acquisition, storage, transfers, tracing, and disposal of armaments. It is generally known that weak WAM structures significantly hinder peace, security and development. Not only can inadequate WAM contribute to the misuse of arms and ammunition by security forces, it can also lead to diversion and, therefore, enable urban violence, displacement, human rights violations and organised crime.

Many countries that could benefit from the military capacity-building component of the EPF do not fulfil international standards for WAM. In combination with high levels of corruption, this can lead to military personnel reselling imported arms on the black market or to security forces “borrowing” state-owned arms for personal use. Additionally, if sites were secured, this would prevent non-military staff from looting and stealing arms on a smaller scale.

To tackle this problem, the EU should link EPF-funded arms transfers to a compulsory evaluation (baseline assessment) of existing WAM structures on-site. Depending on the results of this evaluation, the EU should assist the recipient country in improving their WAM structures. EPF funds should be available to fund the assessments and assistance programmes. Such programmes could, for example, aim at strengthening domestic legal frameworks governing arms, ammunition and their management or physical security and stockpile management (PSSM)². The EPF can build on programmes and projects that already work closely together with relevant local actors to improve their capabilities in overseeing, managing and controlling their arms. Improving WAM and national compliance with international standards will reduce the risk of diversion of military equipment. The EU would not even have to start from scratch, but

2 \ PSSM aims at securing arms, establishing transparent holdings, and tracing the circulation of weapons. It includes measures to foster the reliability of armouries and inventory practices, e.g. through marking and registration of weapons, or the destruction of surplus and defective weapons.

could rather lean on existing expertise and structures, using its resources efficiently whilst at the same time supporting actors who are already working in this field.

Involve the European Parliament

As an instrument with defence and military implications, the EPF should be backed up by democratic and civil controls. Regular checks whether transferred arms and other military equipment are used as declared could strengthen the EU's role in sustainable peace promotion. This is why the proposed EPF should entrench a guarantee of democratic control by integrating the European Parliament in the discussion about arms transfer decisions. Assuring parliamentary checks helps mitigate democratic legitimacy problems and improves the accountability of arms transfers under the EPF.

In its official recommendation from March 2019, members of the European Parliament asked to be regularly briefed by the Council and the HR on decisions taken under the EPF and on its general implementation. They also recommended that Parliament's views be taken into account when preparing proposals for programmes. Despite wanting to be involved, the European Parliament's role in the ongoing negotiations of the EPF has been minimal so far, and it remains to be seen whether it will be playing any role at all. As the EPF will be established as a CFSP instrument, the European Parliament will have no formal oversight role, and in such a case, budgetary powers lack a legal base in the Treaty on European Union. However, it is an established practice in other off-budget instruments to integrate Parliament in their structures: For example, in the context of the European Development Fund, Parliament is granted discharge powers, and its members are regularly briefed on its implementation. This should also be the case for arms transferred under the EPF, where representatives of the EPF from the Council should explain and discuss their decisions in the European Parliament.

Create a complaints mechanism for affected populations

Democratic checks and control mechanisms of the EPF should go beyond EU institutions and citizens. The EU should create a mechanism that facilitates the reporting of complaints and grievances by affected populations, i.e. those in the recipient countries, as they will be chiefly affected by decisions under the EPF. Equipping third countries' armed and security forces comes with the caveat of aggravating security situations there when it leads to increased violence against civilians and human rights violations. Therefore, if the EU wants to fully acknowledge the risks that come with equipping third countries, it should create a platform that collects and documents grievances of the population in the recipient countries. The best-known EU complaints mechanism—the European Ombudsman—will not be available to complainants from recipient countries. However, the European Parliament could appoint another representative who has to report to Parliament as is established practice for the existing Ombudsman's office. This mechanism must be independent, impartial, transparent and easily accessible. Since the EU has already stated that there will be oversight mechanisms regarding the potential misuse of funded arms, the proposed mechanism for affected populations is one of several possible options that would reinforce the EU's accountability and credibility in promoting peace.

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